IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.18187 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

==========

DUDHWALA MOHSIN RAFIKBHAI - Petitioner(s)
Versus
STATE OF GUJARAT THRO.SECRETARY & 4 - Respondent(s)

==========

Appearance :
GIRISH PATEL ASSOC for Petitioner(s) : 1,
MR SUNIT S SHAH, GP for Respondent(s) : 1,2,4 - 5.
NOTICE SERVED for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 29/11/2007
ORAL JUDGMENT

(1) RULE. Learned advocate appearing for the respondents is directed to waive service of rule. The petition is taken up for final hearing and disposal today considering the

view that the Court is inclined to adopt.

(2) The petitioner is a student who obtained a certificate whereunder it was certified by the competent authority that the petitioner belongs to Mansuri Pinjara Muslim Community which is a Socially & Educationally Backward Class declared by Government Resolution dated 01.04.1978. The said certificate is issued by the competent authority on 18.05.2004. On the basis of the result obtained at Std. 12th examination conducted by Gujarat Secondary and Higher Secondary Education Board the petitioner applied for admission to medical course. On 21.05.2004 the Centralized Medical Admission Committee referred the matter to respondent No.2 for verifying the Caste Certificate of the petitioner.

(3) Accordingly, on 01.06.2004 a show cause notice was issued to the petitioner followed up by different communications. Ultimately, on 13.07.2004 the respondent authority was

informed that the petitioner has given up the claim for admission in medical course due to the financial stringency being faced by the family. Subsequently, the authority issued further notice on 31.07.2004. The petitioner produced evidence in support of the Caste Certificate along with replies dated 05.08.2004 and 10.08.2004. As can be seen from the observations made in Paragraph No.4 of order dated 28.11.2006 such evidence was not found to be satisfactory by the authority and hence on 07.10.2004 once again the petitioner was called upon to tender further evidence. This was replied to on 09.12.2004. Thereafter the order does not reveal as to what happened till 20.04.2006 when the Deputy Director visited the residential premises of the petitioner to make 'on the spot' inquires. The report thereof was tendered by the Deputy Director on 10.05.2006. The impugned order has thereafter been made on 28.11.2006.

(4) The learned Government Pleader appearing on behalf of the respondent authorities was, therefore, called upon to explain the delay in framing the impugned order considering the fact that the evidence / explanation was lastly, tendered on 09.12.2004. After going through the file, the Government Pleader has submitted that, as instructed by the authority, there were about 3000 to 4000 cases pending for verification of the Caste Certificates before the authority and hence, in light of the fact that the petitioner had made a statement in writing that the petitioner was not seeking admission to medical course, priority was given to other cases. It was submitted that in any view of the matter the delay was not such that the order was vitiated and even if there was delay in passing the order the Court had to strike a balance as to whether a belated order should be struck down and a certificate obtained by fraud should be permitted to hold field or

whether the certificate which was obtained by misrepresentation, which was cancelled by the authority, such order of cancellation should prevail by condoning the delay, if any. In support of submissions made reliance has been placed on the Apex Court decision in the case of *Lillykutty Vs. Scrutiny Committee, SC & ST & Ors*., (2005) 8 SCC 283.

(5) The contention raised on behalf of the respondent authority appears to be attractive at first blush but does not hold water when closely scrutinized. Admittedly the petitioner had informed on 13.07.2004 that the petitioner was not seeking admission to medical course and despite that vide communication dated 31.07.2004 the petitioner was called upon to produce evidence in support of the claim made. In fact the order itself reveals that hearing took place on 05.08.2004 when three pieces of evidence were produced; again on 10.08.2004 when one document was placed on record on behalf of the petitioner. The said evidence

was dealt with, as noted hereinbefore, in Paragraph No.4 and finding the said evidence to be insufficient, once again a notice was issued on 07.10.2004 followed by notice dated 25.11.2004, and the last hearing took place on 09.12.2004. Therefore, the plea of the respondent authority that after receiving the reply dated 13.07.2004 other cases were accorded priority and the present case was put on the back burner is not borne out from the facts recorded in the impugned order. It is not as if it was only on 09.12.2004 that the statement was made that the petitioner was not seeking admission in medical course. Such a statement had been made five months prior to 09.12.2004 and despite that fact the authority had proceeded with the hearing. Thereafter, the authority wakes up again on 20.04.2006, as recorded in Paragraph No.6 of the impugned order, has a local inquiry made, receives the report of the local inquiry on 10.05.2006 and again reverts back to slumber for a period of

six months thereafter.

(6) Thus, it is apparent that the delay from 09.12.2004 till the date of the order, namely, 28.11.2006 which is nearly of a period of two years remains unexplained. The position in law is well settled that in a case where limitation is not prescribed for passing an order the authority is expected to pass the order within a reasonable time frame, and more so, in a case where action has been promptly initiated and thereafter the matter is allowed to rest without any reason. The Court does not intend to enter into the veracity of the stand of the respondent authority that more than 3000 cases were pending scrutiny, but even if one proceeds on the footing that such a situation obtained at the relevant point of time in 2004, there is no explanation forthcoming for the delay from 09.12.2004 to 28.11.2006 when the impugned order was made.

(7) In the circumstances, it is not necessary to enter into any discussion on the merits of the

issue and the impugned order is required to be quashed and set aside only on the ground of having been made beyond a reasonable point of time from the date of initiation of the proceedings.

(8) The plea to prefer a belated order against a certificate, stated to have been obtained by fraud and misrepresentation, deserves to be stated only to be rejected. In the first instance, as recorded hereinbefore, the Court has not entered into the merits of the controversy and merely because one side makes a statement that the certificate is obtained by fraud and misrepresentation the certificate cannot be stated to have been obtained fraudulently. Fraud is primarily a question of fact which is to be established by leading cogent evidence. The reliance on the Apex Court decision in the case of *Lillykutty Vs. Scrutiny Committee, SC & ST & Ors*. (supra) also cannot assist the case of the respondent authority for the simple reason that there the

question was examined on merits and a decision was rendered. The Court was not called upon to decide whether a belated order should be permitted or not. Once merits of the matter have not been examined the ratio of the said decision would have no bearing on the facts of the case.

(9) Hence, for the reasons stated hereinbefore, the impugned order dated 28.11.2006 is hereby quashed and set aside only on the limited ground of having been passed belatedly without examining the said order on merits. In light of the view that the Court has taken it has not been found necessary to discuss various other reliefs prayed for in the petition.

(10) The petition is allowed accordingly in the aforesaid terms. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

***

Bhavesh*